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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

of [...]

concerning the allocation of the funds decommitted from projects under the 9th and previous European Development Funds (EDF) for the purpose of addressing the needs of the most vulnerable population in Sudan

EXPLANATORY MEMORANDUM

The Government of Sudan has decided not to ratify the revised Cotonou Agreement. Its non-ratification is due to Article 11(6) where the Parties of the Cotonou Agreement consent to "seek to take steps towards ratifying and implementing the Rome Statute and related instruments". In March 2009, the International Criminal Court had issued an arrest warrant against Sudanese President Omar al-Bashir over two counts of war crimes and five counts of crimes against humanity.

As a consequence of its non-ratification, Sudan cannot access funds which otherwise would have been made available under the 10th EDF National Indicative Programme with an allocation of EUR 297 million, of which EUR 258 million as programmable funds (A envelope) and EUR 39 million for unforeseen needs (B envelope), which are now kept in the 10th EDF reserve.

However, the European Union agrees that the current political situation in Sudan, as well as the dramatic humanitarian crisis both in Darfur and in South Sudan, requires a strong engagement of the EU, including through the provision of vital assistance to the Sudanese population. With elections in April 2010 and a referendum on secession for the South in January 2011, the European Union must act in every way it can as a force in favor of peace and stability for Sudan, including the South of Sudan and Darfur, and of democratic transformation across the whole country. The gap left by the non-availability of the 10th EDF will seriously reduce the capacity of the EU to assist the population and to help stabilizing the country which could have consequences for the wider region. Member States thus requested that the European Commission finds innovative solutions to channel funds to the population of Sudan.

In this context, the European Commission proposes to use a part of the funds decommitted from any country or region under the 9th and previous EDFs to this purpose. The overall amount of the decommitted funds currently is EUR 186.67 million. Initially, it was foreseen to request the use of these funds in the context of the 2010 Commission proposal for the performance review of the 10th EDF by Council.¹ However, Article 1 (4) of the 10th EDF Internal Agreement does not exclude for funds decommitted from the 9th and previous EDFs to be used at any time, if so decided by the Council unanimously, on a proposal by the Commission. This decision would be an exception to the so-called sunset clause provided for in this article, as it would use the funds from the previous EDFs. The funds would be allocated on the basis of a needs assessment, to be jointly carried out with the EU Member States in Sudan, and a subsequent financing decision by the European Commission.

After discussions with the Member States at the ACP Working Party in January and February 2010, the Commission is therefore proposing the attached Council Decision allocating an amount of EUR 150 million from the funds decommitted from projects under the 9th EDF and

¹ According to Art. 1 (10) of the 10th EDF Internal Agreement, "*the Council shall, together with the ACP States, conduct a performance review (...). The review shall be undertaken on the basis of a proposal to be prepared by the Commission in 2010. This performance review shall contribute to a decision on the amount of the financial cooperation after 2013*".

previous EDFs for the purpose of addressing the needs of the most vulnerable population in Sudan.

Proposal for a

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concerning the allocation of the funds decommitted from projects under the 9th and previous European Development Funds (EDF) for the purpose of addressing the needs of the most vulnerable population in Sudan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the proposal from the Commission,

Having regard to the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing of Community Aid under the Multi-annual Financial Framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies², and in particular Articles 1 (4) and 6 thereof,

Whereas:

- (1) The Government of Sudan decided not to ratify the revised Cotonou Agreement, thereby losing access to the 10th European Development Fund (EDF) National Indicative Programme (NIP) with a total allocation of EUR 294.9 million, which is now kept in the 10th EDF;
- (2) The current political situation in Sudan, as well as the humanitarian crisis both in Darfur, South Sudan and the Transitional Areas requires a strong engagement of the European Union, including through the provision of vital assistance to the Sudanese population. The gap left by the non-availability of the 10th EDF will seriously reduce the capacity of the EU to assist the population and to help stabilizing the country, which could have consequences for the wider region;
- (3) In order to bridge the financing gap which will occur, it is appropriate to use funds decommitted from the 9th and previous EDFs;
- (4) The funds should be used to address the needs of the most vulnerable populations in Sudan, in particular in the war-affected areas, including the South of Sudan and

² OJ L 247, 9.9.2006, p. 32.

Darfur. They will be allocated on the basis of a financing decision to be adopted by the Commission; provision should also be made to cover the cost of support measures;

- (5) These funds should be managed through centralised and joint management and, for the purpose of simplification, according to the implementation arrangements for the 10th EDF.

HAS ADOPTED THIS DECISION

Article 1

- (1) An amount of EUR 150 million from the funds decommitted from projects under the 9th EDF and previous EDFs is allocated for the purpose of addressing the needs of the most vulnerable population in Sudan. 2% of this amount is allocated for support expenditure by the Commission.
- (2) These funds shall be managed through centralised and joint management in accordance with the rules and procedures applicable for the 10th EDF.
- (3) This decision shall enter into force on XXXX.

Done at Brussels, [...]

For the Council
The President